SASKATCHEWAN

OPINION

OF THE CONFLICT OF INTEREST COMMISSIONER PURSUANT TO SECTION 29(1) OF *THE MEMBERS' CONFLICT OF INTEREST ACT*

IN THE MATTER OF AN APPLICATION BY TED MERRIMAN, MLA (SASKATOON NORTHWEST) WITH RESPECT TO ALLEGED CONTRAVENTIONS OF THE PROVISIONS OF *THE MEMBERS' CONFLICT OF INTEREST ACT* BY THE HONOURABLE DEB HIGGINS, MLA (MOOSE JAW WAKAMOW)

105-03931/

Saskatchewan
Conflict of Interest
Commissioner

SASKATCHEWAN

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February 21, 2005.

The Honourable Myron Kowalsky,
Speaker of the Legislative Assembly,
Room 129, Legislative Building,
Regina, Saskatchewan.
S4S 0B3

Dear Mr. Speaker:

Re: Opinion of the Conflict of Interest Commissioner Pursuant to Section 29(1) of *The Members' Conflict of Interest Act* in the matter of an application by Ted Merriman, MLA (Saskatoon Northwest), with respect to alleged Contraventions of the provisions of *The Members' Conflict of Interest Act* by the Honourable Deb Higgins, MLA (Moose Jaw Wakamow)
My File: C 5274.036 GLG

In pursuance of Section 30(4) of *The Members' Conflict of Interest Act*, I enclose herewith my Opinion respecting the above-described matter.

Yours very truly,

G. L. GERRAND, Q.C.
Conflict of Interest Commissioner
Province of Saskatchewan

GLG/oc
Enclosure

SASKATCHEWAN

February 21, 2005

1. By letter dated December 3, 2004, Ted Merriman, MLA for Saskatoon Northwest ("Mr. Merriman") requested that I conduct an inquiry into the conduct of the Honourable Deb Higgins ("Minister Higgins"), MLA for Moose Jaw Wakamow, and Minister of Labour. Mr. Merriman's letter is reproduced in its entirety as follows:

> "I am writing pursuant to Section 29(1) of *The Members' Conflict of Interest Act* to request that you conduct an inquiry into Labour Minister and Moose Jaw Wakamow MLA Deb Higgins.
>
> As Labour Minister, Ms. Higgins is responsible for numerous pieces of legislation and regulations that affect trade unions in this province. Recently, she announced a number of changes to *The Labour Standards Act* and *The Trade Union Act* which are being promoted by union leadership in this province, such as the proposed proclamation of section 13(4) of *The Labour Standards Act* which would force businesses to distribute hours to part-time workers on the basis of seniority. Other proposed amendments are summarized in the attached new release.
>
> This is of concern because Minister Higgins received the majority of her campaign funding in the 2003 provincial election - $25,260.59 – from trade unions. I have attached a copy of her 2003 election return for your information.
>
> I am asking you to conduct an inquiry into whether it is a conflict of interest for Minister Higgins to receive such a large portion of her campaign funding from trade unions and then, as Labour Minister, enact legislation which primarily benefits trade unions.
>
> I hope that you will look into this potential conflict of interest and I look forward to your response."

2. Section 29(1) and (2) of *The Members' Conflict of Interest Act* ("the *Act*") provides as follows:

> "29(1) A member who has reasonable and probable grounds to believe that another member is in contravention of this Act may request, by application in writing setting out the grounds for the belief and the nature of the contravention alleged, that the commissioner give an opinion respecting the compliance of the other member with the provisions of this Act.
>
> (2) A member who makes a request for an opinion pursuant to subsection (1) shall promptly provide the member who is the subject of the request with a copy of the application."

3. As required by Section 29(2) of the *Act*, Mr. Merriman forwarded to Minister Higgins a copy of the aforementioned letter.

4. Although Section 29(1) of the *Act* enables a Member of the Legislature to request the Commissioner to give an opinion in appropriate circumstances, Mr. Merriman has asked that I carry out an inquiry. The carrying out of an inquiry by myself as Commissioner is authorized by Section 30(1) of the *Act*, which provides as follows:

> "**30**(1) The commissioner may conduct an inquiry:
>
> (a) on receiving a request under section 29; or
>
> (b) where the commissioner considers it to be advisable respecting the compliance of a member with the provisions of this Act."

5. I invited Minister Higgins to provide me with any representations she wished to make respecting the decision which I believe I am required to make respecting the conducting of an inquiry as contemplated by Section 30(1)(a) of the *Act*. Minister Higgins has not made any representations to me as to whether or not I should conduct a formal inquiry.

6. The decisions attributed to Minister Higgins in respect of which Mr. Merriman requests that I inquire into or express an opinion about are three in number and can be described as follows:

1. An Act to amend *The Labour Standards Act* (No. 2) which amendments are reflected in Bill 86, a copy of which is attached hereto as Schedule 1.

2. An Act to amend *The Trade Union Act* which amendments are reflected in Bill 87, a copy of which is attached hereto as Schedule 2.

3. Proposed changes to *The Labour Standards Act* regulations requiring employers to distribute additional hours to part-time workers based on seniority, as reflected in the copy of News Release dated January 7, 2005, draft Regulations and copy of Consultation Information Sheet which is attached hereto as Schedule 3.

These executive acts I hereinafter refer to as "the decisions respecting legislation".

7. A Member making an application under Section 29(1) of the *Act*, is required to set out "the grounds for the belief and the nature of the contravention alleged" in support of his application under the section. By letter dated December 9, 2004, I invited Mr. Merriman to provide me with this detail. He responded by letter dated December 20, 2004, as follows:

> "Thank you for your response to my letter of December 3, 2004.
>
> I believe that Minister Higgins may be in contravention of Section 3 of *The Members' Conflict of Interest Act* for the reasons outlined in my previous letter.
>
> Specifically, I believe that as Labour Minister, Ms. Higgins is involved in numerous decisions which are being promoted by union leadership in this province, such as proposed changes to *The Labour Standards Act* and *The Trade Union Act*, as the proposed proclamation of the section of *The Labour Standards Act* requiring employers to distribute additional hours to part-time workers based on seniority.
>
> As noted in my previous letter, Minister Higgins received well over half of her campaign funding in the last provincial election - $25,260.59 – from various trade unions. I believe that she may be furthering her private interest in the

> sense these decisions may benefit her past and future political campaigns by ensuring the ongoing financial support of the various unions.
>
> Again, I am requesting that you conduct an inquiry into this matter. I hope that I have provided you the information you were seeking and I look forward to your response."

8. As previously observed, Mr. Merriman requests in his application that I carry out an inquiry respecting the conduct of Minister Higgins as it relates to her receipt and acceptance of political contributions from labour related organizations and the relationship between these contributions and the decisions respecting legislation that presumably benefit the labour union interests of the Province of Saskatchewan. The *Act* provides not only that I may conduct an inquiry but that in the carrying out of an inquiry, I shall have all of the powers (and presumably resources) conferred on a Commissioner pursuant to *The Public Inquiries Act*.

9. Subsection 30(3) of the *Act* provides:

> "30(3) For the purposes of an inquiry under this section, the commissioner has all the powers conferred on a commissioner pursuant to *The Public Inquiries Act*."

10. The term "inquiry" is not precisely defined by the *Act*. I have concluded previously that the inquiry I am empowered to conduct under the *Act* may be a formal inquiry pursuant to *The Public Inquiries Act*, or a less formal inquiry as reflected in the Report of my opinion dated March 13, 2002, in the matter of Lingenfelter and Serby respecting the conduct of former Member, Eric Upshall.

11. However, I have concluded there are no factual matters in dispute in this issue and there is no need to carry out any type of inquiry as requested by Mr. Merriman. However, the matters raised by Mr. Merriman warrant an opinion on my part.

12. The factual matters that give rise to this issue are few and straight forward. They can be summarized as follows:

1. Minister Higgins was firstly elected to the Legislative Assembly of Saskatchewan in 1999 as a candidate for the New Democratic Party for the constituency of Moose Jaw Wakamow.

2. She was appointed Minister of Labour on October 12, 2001.

3. Minister Higgins was a successful candidate for re-election in the general election of November, 2003 for the New Democratic Party in the constituency of Moose Jaw Wakamow.

4. During the course of this latter campaign, she received total political contributions of $44,587.04.

5. Of that amount, $22,501.83 was contributed by 18 trade unions or labour related organizations (a slight variation from the figure set out in Mr. Merriman's letter of December 3, 2004).

6. As confirmed to me by the Chief Electoral Officer of the Province of Saskatchewan, all contributions made to the campaign of Minister Higgins, including the contributions from the labour unions and labour related organizations, were made in accordance with the provisions of *The Election Act, 1996* and all electoral expenses and revenues were disclosed in compliance with the provisions of that last mentioned Act.

7. The Government of Saskatchewan has proposed the amendments to *The Labour Standards Act, The Labour Trade Union Act*, has proclaimed amendments to legislation respecting part-time workers and prepared Draft Regulations in respect thereof as described in paragraph 6 of this opinion.

8. Minister Higgins played an integral role in the decision making process with regard to the decisions respecting legislation.

13. The allegation of Mr. Merriman as set forth in his letter to me of December 20, 2004, respecting the possible contravention of *The Members' Conflict of Interest Act* by Minister Higgins, is contained mainly in the second and third paragraphs of that letter. For purposes of clarity, I repeat those allegations:

> "I believe that Minister Higgins may be in contravention of Section 3 of *The Members' Conflict of Interest Act* for the reasons outlined in my previous letter.
>
> Specifically, I believe that as Labour Minister, Ms. Higgins is involved in numerous decisions which are being promoted by union leadership in this province, such as proposed changes to *The Labour Standards Act* and *The Trade Union Act*, as the proposed proclamation of the section of *The Labour Standards Act* requiring employers to distribute additional hours to part-time workers based on seniority."

14. Section 3 of the *Act* provides as follows:

> "3 For the purposes of this Act, a member has a conflict of interest when the member makes a decision or participates in making a decision in the execution of his or her office and at the same time knows that in the making of the decision there is the opportunity to further his or her private interest, his or her family's private interest or the private interest of an associate."

15. There can be no doubt that Minister Higgins has made a decision or participated in the making of a decision with respect to the drafting and introduction of amendments to *The Labour Standards Act* and *The Trade Union Act*. She has also been involved in the decision-making process with respect to the drafting of regulations for the implementation of the "additional hours" provisions of *The Labour Standards Act* passed in 1994 but not proclaimed. In the news release authorized by Minister Higgins dated January 7, 2005, she asserts that the regulations were publicly released in draft form to promote comment and discussion on the part of those interested in the possible future finalization of the regulations. Although the actual wording and detailed drafting of the amendments to the aforementioned Acts and regulations was done by individual employees of the Department

or their professional advisors, the final work product was done under the direction and with the approval of Minister Higgins.

16. Further, there can be little doubt that the decisions and decision-making processes of Minister Higgins were effected and carried out in the execution of her duties as Minister of Labour. Although it is logical to assume that the thrust of the subject amendments and draft regulations was in accord with a program in this regard approved by the Caucus and Executive Council of the Government, the responsibility for giving specific direction to the program would lie with Minister Higgins as Minister of Labour.

17. It is important not to lose sight of the obvious when considering the decisions respecting legislation and the role played or being played by Minister Higgins. There are three steps that lead to the introduction and passing of legislation:

1. The decision to put forward the legislation for Cabinet's consideration;

2. The decision of Cabinet;

3. Action on the part of the Assembly.

18. Minister Higgins' main involvement as a single decision maker in regard to the subject decisions respecting legislation is in the first step. The remaining two steps call for decisions of a collective group of Members.

19. For there to be a violation of Section 3 of the *Act*, these decisions and decision-making process in which Minister Higgins engaged, must have been done by Minister Higgins while knowing that, at the time of the making of the decision and engaging in the decision-making process, there was an opportunity to further her "private interest" as set forth in Section 3.

20. The provisions of the *Act* which are mainly relevant to the complaint of Mr. Merriman are as follows:

> "3 For the purposes of this Act, a member has a conflict of interest when the member makes a decision or participates in making a decision in the execution of his or her office and at the same time knows that in the making of the decision there is the opportunity to further his or her private interest, his or her family's private interest or the private interest of an associate.
>
> 4 A member shall not use information that is gained in the execution of his or her office and is not available to the general public to further or to seek to further the member's private interest, his or her family's private interest or the private interest of an associate.
>
> 5 A member shall not use his or her office to seek to influence a decision made by another person to further the member's private interest, his or her family's private interest or the private interest of an associate."

21. It is to be noted that all three of these sections include the key words "private interest". The prohibition contained in each of these three sections requires the establishment of an opportunity to further the "private interest" of the Member (or his or her family's or associate's private interest where appropriate), in relation to the making of a decision or the participating in the making of a decision in the execution of the office of the Member. A consideration of the meaning of the words "private interest" in the context of the issues raised by Mr. Merriman in his complaint, is a critical aspect of this opinion.

22. All Canadian Provinces and Territories have statutes that relate to the identification and management of ethical or conflict of interest considerations on the part of elected members to the Provincial or Territorial Legislatures. Most of the statutes have sections similar to Section 3 of the Saskatchewan Act and the expression "private interest" has been a subject of formal comment and opinion by several Conflict of Interest and Ethics Commissioners in a number of Canadian provinces during the past several years. No attempt is made in the *Act* to provide an affirmative definition of the expression "private interest". Significantly, the term "private interest" is defined negatively in the Definition Section of the *Act* as follows:

> "2(1) In this Act:
>
> ...
>
> (h) **"private interest"** does not include an interest in a decision:
>
> (i) that is of general public application;
>
> (ii) that affects a person as one of a broad class of persons; or
>
> (iii) that concerns the remuneration and benefits of a member or an officer or employee of the Assembly;"

It is interesting to note that the Conflict of Interest Acts in British Columbia (*Members' Conflict of Interest Act* S.B.C. 1990 c.54, s.1), Alberta (*Conflicts of Interest Act*, S.A. 1991 c. C-22.1, s.1), Ontario (*Members Integrity Act,* 1994, S.O. 1994 c.38, s.1 and New Brunswick (*The Members' Conflict of Interest Act* [S.N.B. 1999, c. M-7.01]) define the term "private interest" in the negative in identical words employed by Section 2(1)(h) of the Saskatchewan *Act.*

23. The rationale for the employing of the negative definition respecting the expression "private interest" is described by the Hon. Stuart G. Stratton, Q.C., Conflict of Interest Commissioner for New Brunswick in his report to the Speaker in the Jeannot Volpé opinion dated September 28, 2001 where, at page 7, the Commissioner writes as follows:

> "In British Columbia, a committee of their Legislature, when considering a review of their *Members' Conflict of Interest Act*, recommended that their Act retain the present negative definition of "private interest" rather than being amended to include a positive definition. The rationale for the committee's recommendation was stated in these terms:
>
> > 'It was agreed that the negative definition, supplemented by the growing body of rulings by Commissioners, provided enough clarity to the definition in terms of what is and what is not covered by the term "private interest." ' "

24. I have reviewed the reports, opinions and writings of Conflict of Interest and Ethics Commissioners in other Canadian jurisdictions with respect to the meaning and application of the expression "private interest" in varying factual circumstances. I have found these reports, opinions and writings of considerable assistance to me in analyzing and determining the issues

raised in this complaint. Reference will be made to the work of some of my fellow Commissioners at a further point in this opinion.

25. The essence of the allegation of breach of the provisions of the *Act*, is set forth in the penultimate paragraph of Mr. Merriman's letter dated December 20, 2004, which for purposes of clarity, I repeat:

> "As noted in my previous letter, Minister Higgins received well over half of her campaign funding in the last provincial election - $25,260.59 – from various trade unions. I believe that she may be furthering her private interest in the sense these decisions may benefit her past and future political campaigns by ensuring the ongoing financial support of the various unions."

26. It is abundantly clear that Minister Higgins received significant financial contributions from trade unions and labour related organizations. The specific financial contributors and the amounts contributed in this area to Minister Higgins' election as revealed by her Return of Election Expenses in the election of November, 2003, are as follows:

Saskatchewan Federation of Labour	$ 300.00
United Food & Commercial Workers – Local 1400	4,500.00
Sask. Area Council CEP DEC Fund	1,000.00
Sask. Joint Board, Retail Wholesale Department Store Union	500.00
CUPE Sask.	500.00
United Steel Workers of America Area Council	500.00
Sask. Building & Construction Trades Council	1,000.00
ILWU Canada	500.00
Canadian Ironworker Political Action Fund	1,000.00
IBEW Local 2038	500.00
United Food & Commercial Workers – Local 1977	500.00
United Food & Commercial Workers – Local 248	1,000.00
United Food & Commercial Workers – Local 1400	500.00
Saskatoon & District Labour Council	1,000.00
United Food & Commercial Workers National Council	2,000.00
United Food & Commercial Workers Provincial Council	550.00
Moose Jaw Union Centre –Furniture Donation in Kind	300.00
United Food & Commercial Workers Union – Local 401	6,351.83
	$ 22,501.83

As previously observed, the total of $22,501.83 is slightly at variance with the figure of $25,260.59 set out in the letter of Mr. Merriman.

27. There were additional financial contributions to Minister Higgins' campaign from individuals, corporations and unincorporated organizations or associations bringing her total campaign contributions to the sum of $44,587.04. Obviously, over half of her campaign contributions came from trade unions or labour related organizations.

28. An examination of Minister Higgins' Return of Election Expenses form for the previous general election reveals a similar pattern of political contributions.

29. It is equally clear that Minister Higgins, in her capacity as Minister of Labour, has participated in the making of decisions when, if implemented and given formal approval, will affect broad classes of persons in the Province of Saskatchewan. These legislative measures, which have been previously described in greater detail, are supported by Minister Higgins in her capacity as Minister of Labour and as a member of the governing party, which obviously advances the legislative changes as part of its program.

30. The basic question for consideration by me is whether or not the significant monetary contributions by a number of trade unions and labour related organizations to Minister Higgins during the election campaign of 2003, along with the prospect of monetary contributions from similar groups and organizations in the future constitute a "private interest" for Minister Higgins which she had an opportunity of furthering by reason of her decisions respecting legislation.

31. It is generally accepted that contributions to political campaigns are a necessary and acceptable aspect of our political system. Contributions to political campaigns can take a variety of forms, including contributions of money, services, equipment and vehicles or the giving of time generally. The making of contributions to political parties and individual candidates is an important aspect of our democratic system. Candidates and political parties

publicly announce a position on a variety of issues that are of interest to the citizens of a jurisdiction and contributions to the candidate or political party are often prompted by their announced positions on key issues of the day. Political candidates and political parties often take opposing positions on the key issues of the day and the electorate choose to make their political contributions to the candidate and political party which reflect their views on an individual issue or group of issues. Traditionally, segments of the electorate support both financially and at the polls, the candidate and political party that best represent their political views and aspirations. This is an accepted process and practice and has existed for decades in the western democracies. Governments have rarely attempted to interfere with this basic democratic process.

32. Contributions to individuals or political parties are supported by the tax system and are governed in great detail by *The Elections Act, 1996* under the direction of the Chief Electoral Officer (who is also an independent officer of the Legislative Assembly). That *Act* also sets out specific dollar limits within which any candidate must operate. Accordingly, there is no capacity for any individual to "buy" an election in the sense that there are legislatively chosen limits for contributions. In addition, *The Elections Act, 1996* specifically sets out who may make such contributions, and in Saskatchewan that includes unions and corporate bodies. This is a choice freely made by the Legislative Assembly and one that should not be functionally reversed by interpretation of *The Members' Conflict of Interest Act*.

33. The financial contributions made to Minister Higgins by the trade unions and labour related organizations during the November, 2003, provincial general election were certainly beneficial to Minister Higgins personally. These financial contributions clearly went a long way in paying for the expenses incurred in the conducting of the campaign of Minister Higgins and there can be little doubt that these financial contributions were for her personal benefit as well as the benefit of the New Democratic Party that she represented. However, in the factual circumstances of this complaint, I am of the opinion that these financial contributions do not constitute a "private interest" as contemplated by the provisions of the *Act* and specifically Sections 3, 4 and 5.

34. Although the term "private interest" is not statutorily defined in an affirmative manner in the Saskatchewan or indeed in the comparable Acts of any other Canadian jurisdiction, the meaning of the term has been discussed by Conflict and Ethics Commissioners for well over a decade. An exhaustive and erudite examination of the term "private interest" was carried out by Commissioner E.N. (Ted) Hughes in the decision in the Robin Blencoe matter dated August 16, 1993. After reviewing common law decisions of considerable antiquity, Commissioner Hughes concluded that the term "private interest" as used in the British Columbia statute could not be interpreted to require a pecuniary interest to exist. Commissioner Hughes opined that "private interest is not limited to a pecuniary or economic advantage. It can include any real or tangible benefit that enures to the personal benefit of the member" (page 28).

35. Commissioner Hughes concluded in Blencoe there was "an apparent" conflict of interest established. It should be pointed out that the British Columbia legislation has provision for "an apparent conflict of interest" constituting an offence under its legislation. Saskatchewan has no similar provision. Nevertheless, the discussion of Commissioner Hughes of the important role of political contributions to our system of parliamentary democracy is of value.

> "Indeed in our system of parliamentary democracy, campaign contributions and assistance are to be encouraged and fostered and must be seen in a positive light as an interest accruing not only to a political party but also to the public generally; it is thus an interest clothed with the public interest. Nevertheless, it would be wrong to deny that in some circumstances it is also an interest that accrues to individual candidates and is thus also a private interest. This is particularly the case where the financial contribution is specifically directed to the candidate even though it is payable to the party. It is also the case where the non-financial contribution or assistance is of particular benefit to the candidate. The non-financial contribution on behalf of a specific candidate (notwithstanding that it is also on behalf of the party that the candidate represents) can include an array of activities from distributing leaflets, knocking on doors, developing campaign strategies, public endorsements and fundraising. While these factors may constitute a "private interest", the mere receipt of a private interest does not constitute a breach of the Act ..."

36. In my opinion, the provisions of the *Act* mandate a distinction between private interests and political interests. The matters exempted from inclusion in private interest, as detailed in paragraph 22 of this opinion, are matters that relate to the political arena (excluding matters related to remuneration or benefits). If the decision of the Member is "of general public application" or "affects a person as one of a broad class of persons" the decision is not viewed statutorily as relating to the "private interest" of the Member, even though the interests of the Member may be advanced by the decision. As expressed in my opinion dated December 7, 2004, regarding the Property Education Tax Benefit "the executive and legislative responsibilities of Members could not be properly carried out without the exemptions to the definition of the words "private interest" as set forth in the *Act*."

37. These views are reinforced by the inclusion in the *Act* of Section 6.

> This Act does not prohibit the activities in which members normally engage on behalf of members of the public."

A similar provision appears in most other provincial Acts.

38. This distinction between political and private interests was discussed by Commissioner W.D. Parker in 1987 in the Sinclair Stevens matter.

> "It should be noted that the allegations contain as an element the suggestion that Mr. Stevens' favourable treatment of Hyundai was motivated not only by considerations involving the potential political benefit that would accrue to him through having the parts plant placed in his own riding, but by his private business interests as well. If the allegation had related only to Mr. Stevens' private political interests, I would have had grave doubts about whether, even if true, such an allegation was an allegation of conflict of interest into which I should inquire and report. This is a complex question that requires a careful assessment of the proper extent to which a minister of the Crown can act to forward his or her own partisan political ends. I do not find it necessary, however, to deal with the question of whether such a political interest, standing alone, would be sufficient to be considered as creating a conflict. It is because this assertion is combined with the allegation that Mr. Stevens was motivated by his private business interests as well that I shall deal with it as an allegation of conflict of interest." [emphasis added]

39. This view was embraced by Alberta Commissioner Robert Clark in his Report of April, 1997, respecting allegations against Premier Ralph Klein. The complaint related to the alleged use by government members of the facilities and employees of Alberta Treasury to prepare cost estimates for policies and programs proposed by the Alberta Liberal Party. Commissioner Clark discussed the exclusion of "political interests" from the Conflict of Interest Act in the following words:

> "If political interests, especially the interest in winning an election, is a "private interest"," practically everything a Member does could be a breach of the Act because almost every activity undertaken by an elected official contains an element of seeking popular support and the possibility of receiving that support in a re-election bid. Every speech made, every vote cast, every decision taken must, and should, contain a consideration of how that action will be received by the voters. This fundamental and final accountability to the voter is the basis of democracy. If the consideration by the Member of how much support a speech, vote or decision will gain him or her is a "private interest" (ie, Will this help me get re-elected?"), the Act will operate to prevent speeches, votes and decisions. I do not believe that the Legislature intended the *Conflicts of Interest Act* and the Ethics Commissioner to prevent Members from doing those things which they believe will maximize their public acceptance and hence their chances of bring re-elected."

40. Commissioner H.A.D. Oliver of British Columbia entertained an application by Michael De Jong in June of 1998, where, the Commissioner considered the potential breach by a Cabinet Minister of a section of the British Columbia legislation similar to Section 3 of the Saskatchewan Act. The Minister publicly supported a project for her constituency, which project was being advanced by a private corporation which had given a political donation to the Minister.

41. Commissioner Oliver declined to conclude that this conduct on the part of the Minister constituted a pursuit of a private interest. He said at page 11 of his Report:

> "In the final analysis I do not accept the suggestion that open support by an MLA of some cause or project for partisan political reasons (if such be the case) can be equated with the pursuit of a private interest within the meaning of the

> *Members' Conflict of Interest Act*. I am not persuaded that a member who supports some cause or votes in favour of or against some project merely because he or she believes such a cause to be beneficial to the political interest the member is elected to represent, is thereby pursuing a "private interest" within the meaning of the Act. I find the argument that the re-election issue is capable of constituting a "private interest" is too vague and speculative to form the basis of a conflict of interest ..."

42. There may well be circumstances where the decision making process of a member invokes the consideration of the private interest of that member in relation to financial contributions to political campaigns. If the decision making process of the member does not have "general public application" or does not affect "a person as one of a broad class of persons" and the decision-making process is limited to individuals or corporations who have contributed to the political campaign of the decision making member, the private interest of the member may be advanced as contemplated by Section 3 and other provisions of the *Act*. This was the circumstance dealt with by Commissioner Hughes in the Robin Blencoe report previously referred to. The circumstances were complicated but can be summarized briefly. A Minister of a governmental department was called upon to make certain administrative decisions in response to formal applications by individuals and corporations respecting development of certain property. The individuals and corporations had supported the political endeavors of the Minister and were desirous of favourable action from the Minister and government departments generally in respect to their business interests.

43. Commissioner Hughes observed:

> "It is to be emphasized, however, that a Member who has received a campaign contribution, financial or otherwise, must not, at least in some circumstances, ... thereafter put him or herself in a position to confer an advantage or a benefit on the person who made that contribution."

44. The two factual events that comprise the back drop to this complaint namely, the receipt of political contributions from labour organizations by Minister Higgins and her decisions respecting legislation are valid and accepted processes in the political arena when viewed

separately. The combining of these processes, in these factual circumstances, does not result in a breach of the *Act* or particularly Section 3 as suggested by Mr. Merriman, in my opinion.

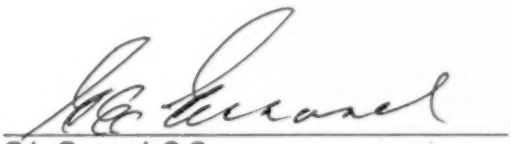
45. The definition clauses of the *Act* clearly exempts from inclusion in any consideration of the existence of private interest a "decision ... that is of general public application" or "that affects a person as one of a broad class of persons". The decisions of Minister Higgins respecting legislation fall into this category. All employees and employers in the Province of Saskatchewan will come within the ambit of the proposed amendments to *The Labour Standards Act* and *The Trade Union Act*, including the draft regulations related to additional hours to part-time workers based on seniority if the amendments are passed and the Draft Regulations are finalized. Therefore these are decisions that relate not to private interests but to political interests.

46. The Legislature did not intend that the *Act* impede the traditional political process where the governing party pursues its legislative program while in power and is rewarded or otherwise by the electorate at the subsequent general election. Many of the aspects of Minister Higgins' decisions respecting legislation are, at the time of the writing of this opinion, a subject of public debate and criticism. I make no comment on the merits of the decisions respecting legislation. That issue is for public debate and ballot box action. My jurisdiction is confined to opining on whether a Member's conduct is in accord with the precise provisions of the *Act*.

47. If individual trade unions that have contributed financially to the election campaign of Minister Higgins benefit by reason of the decisions of Minister Higgins respecting legislation, those individual trade unions benefit because the decisions respecting legislation have general application and affect the individual trade unions as a broad class of persons and organizations. If the decisions of Minister Higgins applied only to the trade unions that had made financial contributions to her campaign, a different conclusion might well develop. In these latter circumstances, Minister Higgins might be furthering her private interest and be in a position of conflict under the *Act*. However, that is not the situation.

48. It was appropriate for Mr. Merriman to raise this issue with me. I am unaware of this specific issue having been previously considered in other Canadian jurisdictions and I hope this opinion will assist all Members.

DATED at the City of Regina, in the Province of Saskatchewan, this 21st day of February, 2005.



G.L. Gerrand, Q.C.,
Conflict of Interest Commissioner
Province of Saskatchewan

SCHEDULE 1

TO THE OPINION OF CONFLICT OF INTEREST COMMISSIONER,
G.L. GERRAND, Q.C., DATED FEBRUARY 21, 2005

IN THE MATTER OF AN APPLICATION BY
TED MERRIMAN, MLA (SASKATOON NORTHWEST)
WITH RESPECT TO ALLEGED CONTRAVENTIONS OF THE PROVISIONS OF
THE MEMBERS' CONFLICT OF INTEREST ACT BY
THE HONOURABLE DEB HIGGINS, MLA (MOOSE JAW WAKAMOW)

BILL

No. 86 of 2004

An Act to amend *The Labour Standards Act* (No. 2)

(Assented to , 2004)

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Saskatchewan, enacts as follows:

Short title

1 This Act may be cited as *The Labour Standards Amendment Act, 2004 (No. 2).*

R.S.S. 1978, c.L-1 amended

2 *The Labour Standards Act* is amended in the manner set forth in this Act.

Section 61 amended

3 Subsection 61(1) is amended by adding "or from a decision of the director made pursuant to subsection 62.4(2.1)" **after** "wage assessments".

Section 62 amended

4(1) Subsection 62(1) is repealed and the following substituted:

"(1) Any of the following may serve a notice of appeal on the registrar of appeals within 21 days after the date of service of a wage assessment or a decision of the director pursuant to subsection 62.4(2.1), as the case may be:

(a) an employer or corporate director who disputes liability for the amount set out in a wage assessment;

(b) an employee who disputes the amount set out in a wage assessment;

(c) an employer or employee who disputes a decision of the director pursuant to subsection 62.4(2.1)".

(2) Subsection 62(3) is repealed and the following subsections substituted:

"(3) If the appellant is an employer or a corporate director, the employer or corporate director must deposit with the registrar of appeals:

(a) in the case of an appeal from a wage assessment, the amount set out in the wage assessment or any other amount that is prescribed in the regulations; or

(b) in any other case, the amount that is prescribed in the regulations.

"(3.1) Subsection (3) does not apply if moneys have been paid to the registrar of appeals pursuant to a third party demand".

(3) Subsection 62(4) is repealed and the following substituted:

"(4) On the final determination of an appeal, the deposit mentioned in subsection (3):

(a) shall be returned to the employer or corporate director if the determination is in favour of the employer or corporate director;

(b) in the case of an appeal from a wage assessment, shall be applied to the wage claims of the employees if the determination is in favour of the employees; or

(c) in any other case, shall be retained by the director".

(4) Subclause 62(5)(c)(iv) is amended by adding "or decision of the director pursuant to subsection 62.4(2.1)" **after** "the wage assessment".

(5) Subsection 62(6) is amended by adding "or decision of the director pursuant to subsection 62.4(2.1)" **after** "wage assessment".

(6) Subsection 62(7) is amended by striking out "The copy" **and substituting** "In the case of an appeal from a wage assessment, the copy".

Section 62.2 amended

5 Clause 62.2(1)(a) is amended:

(a) in subclause (i) by adding "or confirm the decision of the director pursuant to subsection 62.4(2.1)" **after** "the wage assessment"; **and**

(b) in subclause (ii):

(i) by striking out "or" **after paragraph (A);**

(ii) by striking out "and" **after paragraph (B) and substituting** "or"; **and**

(iii) by adding the following after paragraph (B):

"(C) revoke the decision of the director; and".

Section 62.3 amended

6(1) Subsection 62.3(1) is amended by adding "or a decision of the director pursuant to subsection 62.4(2.1)" **after** "a wage assessment".

(2) Subsection 62.3(2) is amended by adding "or a decision of the director pursuant to subsection 62.4(2.1)" **after** "a wage assessment".

(3) Clause 62.3(4)(a) is amended by adding "or the decision of the director pursuant to subsection 62.4(2.1)" **after** "the wage assessment".

Section 62.4 amended

7(1) The following subsection is added after subsection 62.4(2):

"(2.1) The director may issue a decision:

(a) that an employer has not complied with section 74 and, in the decision, order the employer to do one or more of the following:

(i) comply with section 74;

(ii) restore the employee to his or her previous position;

(iii) pay any wages that the employee has lost as a result of the employer's failure to comply; or

(b) that an employer has complied with section 74".

(2) Subsection 62.4(3) is amended by striking out "A certificate issued pursuant to subsection (1) or (2)" **and substituting** "A certificate or a decision issued pursuant to subsection (1), (2) or (2.1)".

(3) The following subsection is added after subsection 62.4(4):

"(5) A decision filed pursuant to subsection (3) has the same force and effect as if it were a judgment obtained in the Court of Queen's Bench".

Section 74 amended

8(1) Subsection 74(1) is amended in the portion preceding clause (a) by adding ", take any reprisal against" **after** "threaten to discharge".

(2) The following subsection is added after subsection 74(2):

"(3) In this section, **'lawful authority'** means:

(a) any police or law enforcement agency with respect to an offence within its power to investigate;

(b) any person whose duties include the enforcement of federal or provincial law with respect to an offence within his or her power to investigate; or

(c) any person directly or indirectly responsible for supervising the employee".

Coming into force

9 This Act comes into force on assent.

FIRST SESSION

Twenty-fifth Legislature

SASKATCHEWAN

B I L L

No. 86 of 2004

An Act to amend *The Labour Standards Act* (No. 2)

Received and read the

First time

Second time

Third time

And passed

Honourable Debra Higgins

REGINA SASKATCHEWAN
Printed by authority of
The Queen's Printer
2004

SCHEDULE 2

TO THE OPINION OF CONFLICT OF INTEREST COMMISSIONER,
G.L. GERRAND, Q.C., DATED FEBRUARY 21, 2005

IN THE MATTER OF AN APPLICATION BY
TED MERRIMAN, MLA (SASKATOON NORTHWEST)
WITH RESPECT TO ALLEGED CONTRAVENTIONS OF THE PROVISIONS OF
THE MEMBERS' CONFLICT OF INTEREST ACT BY
THE HONOURABLE DEB HIGGINS, MLA (MOOSE JAW WAKAMOW)

BILL

No. 87 of 2004

An Act to amend *The Trade Union Act*

(Assented to , 2004)

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Saskatchewan, enacts as follows:

Short title

1 This Act may be cited as *The Trade Union Amendment Act, 2004*.

R.S.S. 1978, c.T-17 amended

2 *The Trade Union Act* is amended in the manner set forth in this Act.

Section 4 amended

3(1) The following subsections are added after subsection 4(1.1):

"(1.2) If the term of a member of the board expires after the member has begun hearing a matter before the board but before the proceeding is completed, the member may continue as if his or her term had not expired for the purpose of completing the proceeding.

"(1.3) If a member continues to serve pursuant to subsection (1.2), he or she shall not begin to hear any additional matters before the board".

(2) Subsection 4(2) is repealed and the following substituted:

"(2) The board must not proceed with a matter unless a quorum is present.

"(2.1) Subject to subsection (2.2), a quorum of the board consists of three members at least one of whom must be the chairperson or a vice-chairperson.

"(2.2) The chairperson may designate himself or herself or a vice-chairperson to hear a matter alone for proceedings related to section 25.1 or 36.1".

Section 17 amended

4 The following subsections are added after subsection 17(1):

"(1.1) The chairperson of the board may make regulations prescribing rules of procedure for matters before the board, including preliminary procedures, and prescribing forms that are consistent with this Act and any other regulations made pursuant to this Act.

"(1.2) The Lieutenant Governor in Council may make regulations interpreting, defining, enlarging or restricting how the provisions of the *Canada Labour Code* mentioned in section 18 apply for the purposes of this Act".

New section 18

5 Section 18 is repealed and the following substituted:

"Procedural powers of board

18 The board has, for any matter before it:

(a) subject to regulations made pursuant to subsection 17(1.2), the powers set out for the Canada Industrial Relations Board in sections 16 and 16.1 of the *Canada Labour Code*, with any necessary modification, as those sections existed on the day this section comes into force;

(b) the power to determine the form in which and the time within which any party to a proceeding before the board must file or present any thing, document or information and to refuse to accept any thing, document or information that is not filed or presented in that form or by that time;

(c) the power to bar from making a similar application for any period not exceeding one year from the date an unsuccessful application is dismissed:

(i) an unsuccessful applicant;

(ii) any of the employees affected by an unsuccessful application;

(iii) any person or trade union representing the employees affected by an unsuccessful application; or

(iv) any person or organization representing the employer affected by an unsuccessful application;

(d) the power to refuse to entertain a similar application for any period not exceeding one year from the date an unsuccessful application is dismissed from anyone mentioned in subclauses (c)(i) to (iv);

(e) the power to require any person, trade union or employer to post and keep posted in a place determined by the board, or to send by any means that the board determines, any notice that the board considers necessary to bring to the attention of any employee;

(f) the power to enter any premises of an employer where work is being or has been done by employees, or in which the employer carries on business, whether or not the premises are those of the employer, and to inspect and view any work, material, machinery, appliances, articles, records or documents and question any person;

(g) the power to enter any premises of a trade union and to inspect and view any work, material, articles, records or documents and question any person; and

(h) the power to authorize any person to inquire into any application, request, complaint, matter or thing and to report to the board on the inquiry".

New section 18.1

6 The following section is added after section 18:

"Privileges and immunities

18.1 The members of the board shall have the same privileges and immunities as a judge of the Court of Queen's Bench".

Section 26.5 amended

7(1) Subsection 26.5(1) is repealed and the following substituted:

"(1) If the board has made an order pursuant to clause 5(b), the trade union and the employer, or their authorized representatives, must meet and commence bargaining collectively within 20 days after the order is made, unless the parties agree otherwise.

"(1.1) Either party may apply to the board for assistance in the conclusion of a first collective bargaining agreement, and the board may provide assistance pursuant to subsection (6), if:

(a) the board has made an order pursuant to clause 5(a), (b) or (c);

(b) the trade union and the employer have bargained collectively and have failed to conclude a first collective bargaining agreement; and

(c) one or more of the following circumstances exists:

(i) the trade union has taken a strike vote and the majority of those employees who voted have voted for a strike;

(ii) the employer has commenced a lock-out;

(iii) the board has made a determination pursuant to clause 11(1)(c) or (2)(c) and, in the opinion of the board, it is appropriate to assist the parties in the conclusion of a first collective bargaining agreement pursuant to subsection (6);

(iv) 90 days or more have passed since the board made an order pursuant to clause 5(b)".

(2) Subsection 26.5(2) is amended by striking out "subsection (1)" **and substituting** "subsection (1.1)".

(3) Subsection 26.5(3) is amended by striking out "subsection (1)" **and substituting** "subsection (1.1)".

(4) Subsection 26.5(4) is amended by striking out "subsection (1)" **and substituting** "subsection (1.1)".

(5) Subsection 26.5(6) is amended by striking out "subsection (1)" **and substituting** "subsection (1.1)".

New section 37.3

8 Section 37.3 is repealed and the following substituted:

"Related businesses

37.3(1) On the application of an employer affected or a trade union affected, the board may declare more than one corporation, partnership, individual or association to be one employer for the purposes of this Act if, in the opinion of the board, associated or related businesses, undertakings or other activities are carried on under common control or direction by or through those corporations, partnerships, individuals or associations.

(2) Subsection (1) applies only to corporations, partnerships, individuals or associations that have common control or direction on or after October 28, 1994".

Coming into force

9 This Act comes into force on proclamation.

FIRST SESSION

Twenty-fifth Legislature

SASKATCHEWAN

B I L L

No. 87 of 2004

An Act to amend *The Trade Union Act*

Received and read the

First time

Second time

Third time

And passed

Honourable Debra Higgins

REGINA SASKATCHEWAN
Printed by authority of
The Queen's Printer
2004

SCHEDULE 3

TO THE OPINION OF CONFLICT OF INTEREST COMMISSIONER,
G.L. GERRAND, Q.C., DATED FEBRUARY 21, 2005

IN THE MATTER OF AN APPLICATION BY
TED MERRIMAN, MLA (SASKATOON NORTHWEST)
WITH RESPECT TO ALLEGED CONTRAVENTIONS OF THE PROVISIONS OF
THE MEMBERS' CONFLICT OF INTEREST ACT BY
THE HONOURABLE DEB HIGGINS, MLA (MOOSE JAW WAKAMOW)

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Saskatchewan Centennial 2005

News Release

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Saskatchewan

Labour 05-008

CONSULTATIONS ON DRAFT REGULATIONS FOR 'ADDITIONAL HOURS' BEGIN

The provincial government today released draft regulations for implementing the 'additional hours' provisions of *The Labour Standards Act*. The legislation – Section 13.4 of the Act – was passed in 1994, but not proclaimed.

The draft regulations would ensure that existing part-time workers would have the first opportunity to work any additional hours that might become available, based on their qualifications and length of employment. Only workplaces with 50 or more employees at any one location would be affected.

"Our government is committed to building a prosperous economy in this province," Labour Minister Deb Higgins said. "We believe that providing the opportunity for part-time workers to access extra hours of work will help them build good, full-time jobs, rather than forcing them to make ends meet by juggling two or three part-time jobs."

Other features of the draft regulations would ensure that:

- No part-time person would have to accept more hours unless they wanted them;
- New hours would be available in long-term situations where there is an increase in the work being done (longer store hours or an increase in work, for example) or when another employee leaves the workplace; and
- In general, establishments with collective agreements would honour the provisions of the agreement if the provisions were superior to those contained in the draft regulations.

The draft regulations would also ensure that:

- Employers would not be forced to take hours away from one employee and give them to another;
- Employers would not have to fill any additional hours that become available;
- The rules would not apply in emergency situations;
- New hours would not require employers to pay more overtime;
- Workers would not be put in positions they are not qualified to perform; and
- Employers would not need to worry about seniority for call-in hours.

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"My instruction to the department was to try and make the 'additional hours' section work – to bring about real and lasting benefit. The draft regulations before us now are the result of the department's efforts," Higgins said.

"Now that the draft regulations are ready, we are, as promised, moving immediately to consultations with stakeholders and interested parties. I hope that everyone who is potentially affected by this initiative will take the time to review the draft regulations, give some thought to how they might be impacted and send us their comments."

Copies of the draft regulations can be found on the Saskatchewan Labour website at www.labour.gov.sk.ca or by phoning (306) 787-2389.

Those wishing to make submissions on the proposed regulations can send their comments to:

Additional Hours Consultation
Saskatchewan Labour
400 – 1870 Albert Street
Regina, SK S4P 4W1

Or by fax to: (306) 787-7229

Or by e-mail to: additionalhours@lab.gov.sk.ca

The deadline for receipt of written submissions on the draft regulations is January 28th, 2005. Anyone who wishes to meet to review their submission can make arrangements by calling (306) 787-2389.

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For more information, contact:

Greg Leake
Labour
Regina
Phone: (306) 787-4156
Cell: (306) 539-1832

DRAFT

The Labour Standards Regulations

Interpretation of sections 12.1 to 12.8

12.1 For the purposes of section 13.4 of the Act, this section and sections 12.2 to 12.8 of these regulations:

(a) **'additional hours of work that become available'** or **'additional hours'** includes:

(i) all hours of work that become available because of the resignation, retirement, temporary absence, termination or death of an employee; and

(ii) all hours of work that become available because of an increase in the work being done;

but does not include any hours of work that become available on the occurrence of a sudden or unusual event that the employer could not have reasonably foreseen;

(b) **'full-time hours'** means:

(i) subject to subclause (ii), the greater of:

(A) the hours established by the employer for full-time employees for that place of employment; and

(B) 40 hours per week; or

(ii) with respect to a place of employment covered by a collective bargaining agreement, full-time hours as defined in the collective bargaining agreement;

(c) **'length of service'** means:

(i) subject to subclause (ii), the period during which an employee has been employed by an employer, determined by the date of hire; or
(ii) in the case of an employee covered by a collective bargaining agreement, the period during which an employee has been employed by an employer:

(A) determined by the length of service or seniority in accordance with the collective bargaining agreement; or

(B) if the collective bargaining agreement does not set out the method for determining length of service or seniority, determined by the date of hire;

(d) **'part-time employee'** means:

(i) subject to subclause (ii), an employee who regularly works less than full-time hours; or

(ii) in the case of an employee covered by a collective bargaining agreement that defines 'part-time employee', a part-time employee as defined in that collective bargaining agreement;

(e) **'qualifications'** means the knowledge, skill and ability to perform work after a reasonable period of familiarization in the position with respect to which additional hours are being offered;

(f) **'temporary absence'** means any employee absence that is expected to exceed two weeks from the time the additional hours become available but that does not result from the resignation, retirement, termination or death of the employee.

Application of section 13.4 of Act

12.2 Subject to sections 12.4 to 12.8, every employer with 50 or more employees employed at any location of an establishment in Saskatchewan is required, in accordance with section 13.4 of the Act and these regulations, to offer to part-time employees at that location all additional hours of work that become available.

Availability list

12.3(1) Unless there is a system established in the applicable collective bargaining agreement, an employer shall establish a system by which part-time employees may declare their availability to work additional hours.

(2) If an employee wishes to change his or her declaration of availability to work additional hours, the employee shall give the employer written notice to that effect.

(3) On receipt of written notice from an employee pursuant to subsection (2) and not later than 15 days after receipt of the written notice, the employer shall take into account the change in the employee's declared availability when offering any additional hours after that time.

(4) No employee shall change more than three times in any calendar year his or her declaration of availability to work additional hours.

Requirement to offer additional hours

12.4(1) Subject to sections 12.5 to 12.8, an employer shall offer all additional hours to the part-time employee who:

(a) in accordance with the system established pursuant to section 12.3, has declared his or her availability to work additional hours;

(b) has the qualifications to perform the work;

DRAFT

(c) has the greatest length of service among the employees who have declared their availability to work in accordance with the system established pursuant to section 12.3; and

(d) works at the same location of the establishment in which the additional hours have become available, unless it is customary with that employer that employees work at more than one location of the employer's establishment.

(2) Subject to sections 12.6 and 12.7, when offering additional hours to a part-time employee in accordance with subsection (1), the employer shall adjust the employee's work schedule so that the employee is able to work as many hours as possible in the same day.

(3) Subject to sections 12.6 and 12.7, if an employer offers additional hours to a part-time employee in accordance with subsections (1) and (2) and the part-time employee is unable to work the additional hours offered, the employer shall offer the additional hours to the next part-time employee who meets the criteria set out in clauses (1)(a) to (d) until there are no part-time employees who have declared their availability to work in accordance with the system established pursuant to section 12.3 to whom the employer can offer the additional hours.

When no requirement to offer additional hours

12.5 An employer is not required to offer additional hours to a part-time employee if the employer determines that no employee is required to work those additional hours.

Additional hours not to result in overtime

12.6 If the additional hours available to a part-time employee would result in the employer having to pay overtime to the part-time employee, the employer is not required to offer to that part-time employee the portion of the additional hours that would result in the part-time employee working overtime.

Additional hours not to exceed full-time hours

12.7 If the additional hours available to a part-time employee would result in the part-time employee working more hours than full-time hours for that employer, the employer is not required to offer to that part-time employee the portion of the additional hours that would result in the part-time employee working more than full-time hours.

Rights of returning employee

12.8 An employee who returns to work after a temporary absence is entitled:

(a) to the same number of working hours that were normally allocated to that employee before the temporary absence; and

(b) to any additional hours that became available during the employee's temporary absence that would have been allocated to that employee if he or she had not been temporarily absent.

Saskatchewan Labour

ADDITIONAL HOURS FOR PART-TIME WORKERS – WHAT DOES IT MEAN?

In 1994, the Legislature passed an amendment to *The Labour Standards Act* requiring employers to offer additional hours of work to their current part-time employees before they hired any new part-timers. The new section was never proclaimed. Last November, the government announced that it was taking another look at making it work. The intention of the review is to attempt to find a way to make these regulations effective for the 21st century workplace.

The unproclaimed section of *The Labour Standards Act* says:

13.4(1) Where required to do so by the regulations, an employer shall offer to part-time employees in accordance with their length of service and qualifications any additional hours of work that become available, except in the case of emergency circumstances within the meaning of subsection 12(4).

(2) No employer shall take discriminatory action against an employee who refuses to work or to be at the disposal of the employer for additional hours of work in accordance with this section and the regulations.

The proposed regulations are summarized below. They will be fully reviewed before any decisions are made on the draft regulations and on what the next steps will be.

Who Does This Affect?

Any employer with fifty or more employees in any one location must provide the most senior, available and qualified part-time employee with any additional hours of work that become available. However, no part-time employee would have to accept more hours unless they wanted them.

How Is Part-Time Work Defined?

Full-time hours are defined as the number of hours established by the employer for full-time employees or 40 hours per week, whichever is greater. A part-time employee is therefore anyone who works less than full-time hours.

What Are Additional Hours?

Additional hours are those hours that become available when:

- an employee resigns, retires, is terminated or deceased;
- an employee is temporarily absent for a period exceeding two weeks (such as during an extended illness or educational leave); or
- the total number of hours of work in the workplace increase (such as when an additional shift is needed because of increased work or when a business permanently increases its hours of operation).

What About Emergency Or Short-Term Situations?

Hours are not considered "additional" where there is a sudden or unusual occurrence that the employer could not anticipate (such as when an employee calls in sick or if a customer places an unusually large order that needs to be delivered immediately).

How Is Length Of Service Determined?

Length of service is the period of time since the part-time employee was hired, or as agreed to in a collective agreement.

How Are An Employee's Qualifications Determined?

Qualifications are defined as the knowledge, skill and ability to perform the work after a reasonable period of familiarization with the job.

How Is It Determined That An Employee Is Available?

The employer must establish a system for part-time employees to declare their availability to work additional hours, unless such a system is in place. The employee must state their availability in writing and they can only change their availability three times a year.

How Are Employers Protected Against Incurring Extra Costs As A Result?

Employers are not required to offer additional hours where:

- The employer determines they don't need anyone to work those hours;
- Offering the additional hours to that part-time employee would result in the employee working overtime; or
- They result in the employee working more hours than full-time.

How Are Employees On A Temporary Absence Protected?

An employee returning to work after a temporary absence is entitled to the same number of hours he or she worked before the absence, and any additional hours that would have been allocated to the employee if he or she had not been absent.

Can Employers And Employees Establish Their Own Hours of Work Provisions?

Where a collective agreement contains similar provisions that are superior to those contained in the proposed regulations, the workplace will continue to follow the collective agreement rather than the regulations.

A copy of the draft regulations can be found on the Saskatchewan Labour website at: www.labour.gov.sk.ca.

Saskatchewan Labour

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